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**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

KIN/165577

PRELIMINARY RECITALS

Pursuant to a petition filed April 21, 2015, under Wis. Stat. § 48.57(3m)(f), and Wis. Admin. Code § DCF 58.08(2)(b), to review a decision by the Children's Service Society of Wisconsin in regard to Kinship Care, a hearing was held on May 26, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the respondent correctly terminated petitioner's Kinship benefits following the denial of her foster care licensing application.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: Andrea Leaman, Kinship Care Worker
Bureau of Milwaukee Child Welfare
1555 Rivercenter Drive
Milwaukee, WI 53212

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. Petitioner received Kinship benefits related to the care she provided to her grandson.
3. Petitioner applied for a foster care license, but her application was denied on January 7, 2015. Exhibit 1.

4. Due to the denial of the foster care license, petitioner was advised by letter dated April 15, 2015, that her Kinship benefits would cease as of April 15, 2015. Exhibit 1.

DISCUSSION

The Kinship Care benefit is a monthly public assistance payment per child paid to a qualified relative who bears no legal responsibility to support the child. In Wisconsin, this benefit replaced the former Non-Legally Responsible Relative (NLRR) AFDC payment. To be eligible for the payments thereunder, the relative must meet all of the conditions set forth in Wis. Stat. §§48.57(3m)(am)(1-5) or 48.57(3n)(am)(1-6).

The eligibility requirements were changed in Wisconsin Act 28, the 2009 biennial budget bill. Wis. Stat., §48.57(3m)(am)1 now reads that one of the conditions of Kinship Care eligibility is that: "The kinship care relative applies to the county department or department for payments under this subsection and, if the child is placed in the home of the kinship care relative under a court order, for a license to operate a foster home." The change was made by the legislature to shift the funding for care of children from the Kinship Care program to the foster care program. See DSP Memo Series no. 2010-09, dated September 17, 2010.

Therefore, under current rules when a child is placed by a court in a relative's home, the relative must apply for both Kinship Care and a foster home license. If the caretaker relative does not complete the foster licensing process or is denied, the Kinship Care agency must discontinue the Kinship Care payments. This requirement is set out in the Wis. Admin. Code, §DCF 58.065(1); see also DSP Memo Series no. 2012-10, dated November 5, 2012, which explains the time lines for the application process as well as the requirement that the Kinship Care agency discontinue payments if the caretaker does not successfully complete the foster licensing process.

The Administrative Code also provides, however, that Kinship benefits may be continued in certain cases:

3. COURT APPROVES CONTINUED KINSHIP CARE OR LONG-TERM KINSHIP CARE PLACEMENT. Notwithstanding that a kinship care relative's or long-term kinship care relative's application for a license to operate a foster home is denied or the kinship care relative is otherwise determined to be ineligible for licensure, the county department or, in a county having a population of 500,000 or more, the department may make payments to a kinship care relative for as long as all other requirements to receive kinship care or long-term kinship care, as applicable, are met if the court orders the child to remain in the kinship care relative's or long-term kinship care relative's home based on the following information submitted to the court by the county department or the department:
 - (a) The background investigation specified in s. [48.57 \(3p\)](#), Stats., and s. [DCF 58.04 \(2\)](#).
 - (b) The county department's or department's assessment of the safety of the kinship care relative's or long-term kinship care relative's home and the ability of the kinship care relative or long-term kinship care relative to care for the child.
 - (c) A recommendation by the county department or the department that the child remain in the home of the kinship care relative or long-term kinship care relative.

Wis. Adm. Code § DCF 58.065(3).

At hearing the respondent testified that it was determined that the best living situation for the petitioner's grandson was with the petitioner. The respondent was unable to explain the apparent discrepancy and did

not indicate who, exactly, determined the best living situation. The record does not contain any documentation that would establish whether the aforementioned determination was “court approved,” or if it was simply a determination made by the respondent. The respondent did not provide any exhibits to substantiate its determination to cease Kinship benefits, and based upon the sparse record before me, I am unable to conclude that the respondent has established that the cessation of benefits was correct.

CONCLUSIONS OF LAW

The respondent has not established that it correctly sought to discontinue petitioner’s Kinship Care for petitioner’s grandson.

THEREFORE, it is

ORDERED

That this matter is remanded to the respondent to rescind the termination of petitioner’s Kinship benefits until such time that it determines whether or not the petitioner qualifies for continued Kinship benefits under Wis. Adm. Code § DCF 58.065(3). The respondent shall notify petitioner of its determination in writing, and provide petitioner with her appeal rights. All actions required by this Order shall be completed within 10 days following issuance of this Decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

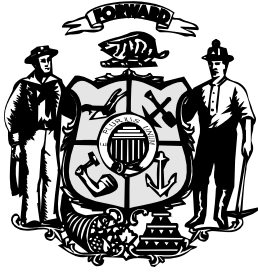
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 31st day of July, 2015

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 31, 2015.

Children's Service Society of Wisconsin

DCF - Kinship Care

DCF - Kinship Care